

Tyrone Oldyn Pro se, Plaintiff  
No. 63211-054  
FCI Allénwood  
PO Box 2000  
White Deer, PA 17887  
In Propria Persona

13 CV 4393

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

TYRONE OLDYN,

Plaintiff,

v.

MICHAEL DELGARDO,  
JOHN FERRETTI,  
GILBERT HOA,  
RAYMOND KELLY,  
THE CITY OF NEW YORK,

Defendants.

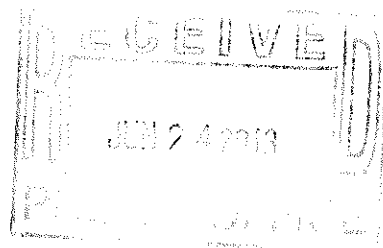
No. \_\_\_\_\_

COMPLAINT FOR  
DAMAGES  
(42 U.S.C. § 1983)  
JURY TRIAL DEMANDED

INTRODUCTORY STATEMENT

1. This is an action for damages sustained by a citizen of the United States against police officers of the New York City Police Department, who unlawfully arrested, assaulted, prosecuted, and harassed the plaintiff.

2. The action is against the Police Commissioner as the supervisory officer responsible for the conduct of the defendants and for the Commissioner's failure to take corrective



action with respect to police peronnel whose vicious propensities were notorious, to assure proper training and supervision of the personnel, or to implement meaningful procedures to discourage lawless official conduct, and against the city of New York as the employer of the police personnel, which is sued as a person under 42 U.S.C. § 1983.

### JURISDICTION

3. This action is brought pursuant to 42 U.S.C. §§ 1983, 1988 and the First, Fourth, Fifth, Eighth, and Fourteenth Amendments to the Constitutuon of the United States.

4. This Court has subject matter jurisdiction of the action 28 U.S.C. §§ 1331, 1343(a)(3), (4).

5. This Court may also exercise supplemental jurisdiction over the plaintiff's state law claims that arise from the same facts and circumstances under 28 U.S.C. § 1367.

### PARTIES

6. Plaintiff is a resident of New York, New York, and all times relevant to the allegations of this complaint was a citizen of the United States, and a resident of Bronx County.

7. At all times relevant to this action, defendant Michael Delgardo was a police officer employed by the New York City Police Department to perform duties in the city

of New York and was assigned to the 52nd Precinct.

a. At all relevant times, this defendant was acting as the agent, servant, and employee of defendant City of New York.

b. This defendant is sued individually and in his official capacity.

8. At all times relevant to this action, defendant John Ferretti was a police officer employed by the New York City Police Department to perform duties in the City of New York and was assigned to the 52nd Precinct.

a. At all relevant times, this defendant was acting as the agent, servant, and employee of defendant City of New York.

b. This defendant is sued individually and in his official capacity.

9. At all times relevant to this action, defendant Gilbert Hoa was a police officer employed by the New York City Police Department to perform duties in the City of New York and was assigned to the 52nd Precinct.

a. At all relevant times, this defendant was acting as the agent, servant, and employee of defendant City of New York.

b. This defendant is sued individually and in his official capacity.

10. At all times relevant to this action, defendant Raymond Kelly was the duly appointed Commissioner of the

New York City Police Department. In this capacity, the Commissioner was:

a. The commanding officer of defendants Michael Delgado, John Ferretti and Gilbert Hoa and was responsible for their training, supervision, and conduct.

b. Responsible by law for enforcing the regulations of the New York City Police Department and for ensuring that New York Police personnel obey the laws of the State of New York and of the United States.

c. Acting as the agent, servant, and employee of the defendant City of New York. This defendant is sued individually and in his official capacity.

11. The defendant City of New York is municipal corporation within the States of New York and, at all relevant times, it employed the other defendants in this action.

12. At all relevant times and in all their actions, the defendants were acting under color of law and pursuant to their authority as police personnel.

13. On March 18, 2009, at 6:05 p.m. Plaintiff was standing on a sidewalk in Bronx County, New York.

14. Plaintiff was approached by defendant Delgado, pushed against a building, placed into a arm bar head-lock, searched, and placed into handcuffs.

15. Plaintiff asked defendant Delgado whether Plaintiff had done something wrong.

16. Defendant Delgado refused to respond, other than telling Plaintiff to "shut up".

17. The Plaintiff was Physically removed from the sidewalk by defendant Delgado and taken to the confines of the 52nd Precinct of the New York Police Department.

18. Plaintiff was transported to the 52nd precinct although there were no grounds for his arrest.

19. On March 18, 2009, after the arrest of the plaintiff, defendants Delgado and Ferretti went before a sergeant of the New York City Police Department, defendant Hoa, and defendants Delgado, Ferretti and Hoa Charged Plaintiff with five (5) felony informations, Robbery 1st Degree, Robbery 2nd Degree, Robbery 3d Degree, Grand Larceny, and Possession of Stolen Property, as well as one (1) misdemeanor Petit Larceny charge.

20. On May 26, 2011, Plaintiff appeared before a Justice of the New York Supreme Court on these charges, and they were terminated in favor of Plaintiff by order of Dismissal and sealing of the proceedings. This dismissal is memorialized by a written order dated May 26, 2011.

21. As a result of the misconduct described above, plaintiff experienced humiliation, emotional distress, pain

and suffering, incurred expenses, including legal fees, in connection with the defense on the charges that were lodged against him, and was otherwise damaged.

22. The Plaintiff was also physically injured as a result of the conduct described in this complaint.

23. The abuse to which plaintiff was subjected was consistent with an institutionalized practice of the New York City Police Department, which was known to and ratified by defendants Commissioner and City.

24. Despite knowledge of these institutionalized practices, the defendants Commissioner and City have at no time taken any effective action to prevent New York City police personnel from continuing to engage in this type of misconduct.

25. Defendants Commissioner and City had prior notice of the vicious propensities of defendants Delgado, Ferretti, and Hoa, but took no steps to train them, correct their abuse of authority, or to discourage thier unlawful use of authority.

26. The failure of defendants Commissioner and City to properly train defendants Delgado, Ferretti, and Hoa included the failure to instruct them in applicable provisions of the State Penal Law of the State of New York and the proper and prudent use of force.

27. Defendant Commissioner and City authorized, tolerated

institutionalized practices, and ratified the misconduct detailed above by:

- a. Failing to properly discipline, restrict, and control employees, including defendants Delgado, Ferretti, and Hoa, known to be irresponsible in their dealings with citizens of the community;
- b. Failing to take adequate precautions in the hiring, promotion, and retention of police personnel, including specifically defendants Delgado, Ferretti, and Hoa;
- c. Failing to forward to the office of the District Attorney of Bronx County evidence of criminal acts committed by police personnel;
- d. Failing to establish or assure the functioning of a bona fide and meaningful departmental system for dealing with complaints of police misconduct, but instead responding to these types of complaints with bureaucratic power and official denials calculated to mislead the public.

28. The conduct of defendants Commissioner and City also constitutes gross negligence under state law.

29. As a Consequence of the abuse of authority detailed above, plaintiff sustained the damages alleged above.

FEDERAL THEORIES OF RECOVERY

30. The actions and omissions described above, engaged in under color of state authority by the defendants (including defendant City, sued as a person and responsible because of its authorization, condonation, and ratification of the acts of its agents), deprived the plaintiff of rights secured to him by the Constitution of the United States, including, but not limited to, the plaintiff's:

- a. First Amendment right to freedom of expression;
- b. Fourth Amendment right to be free from unlawful seizure of his person;
- c. Fifth and Fourteenth Amendment rights to due process of law, including the right to be free from unjustified and excessive force utilized by police; and
- d. Eighth Amendment right to be free from cruel and unusual punishment.

STATE LAW THEORIES OF RECOVERY

31. On July 25, 2011, the plaintiff caused a written verified Notice of Claim to be filed with and served on the proper officers, agents, and employees of the defendant City of New York pursuant to the claims statutes governing these cases. A true and correct copy of the Notice is attached to this complaint and incorporated by reference in it as Exhibit "A."



32. Plaintiff's claim has been denied by operation of law because more than 90 days have elapsed since the service of the Notice of Claim, and adjustment or payment of the Claim has been neglected or refused.

33. The acts and conduct alleged above constitute actionable torts under the laws of the State of New York, including the tort of:

- a. False arrest and imprisonment,
- b. Assault and battery,
- c. Malicious prosecution,
- d. Abuse of process,
- e. Negligence, and
- f. Gross negligence.

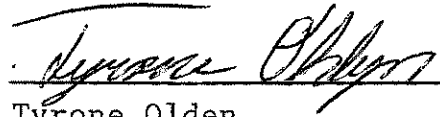
PRAYER

Plaintiff demands the following relief

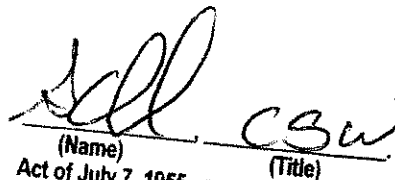
- A. Compensatory damages in the amount of \$100,000.00.
- B. Punitive damages in the amount of \$2,000,000.00.
- C. Attorney's fees pursuant to 42 U.S.C. § 1988.
- D. An award of plaintiff's costs of suit.
- E. All other relief that is appropriate under the circumstances.

Executed on June 19, 2013

Sincerely,



Tyrone Olden  
Pro se  
FCI Allenwood  
PO Box 2000  
White Deer, PA 17887



(Name) (Title)

Authorized by the  
Act of July 7, 1955, as amended, to administer oaths.  
(18 USC 4004).

## All Transactions



Inmate Reg #: 63211054  
 Inmate Name: OLDYN, TYRONE  
 Report Date: 05/10/2013  
 Report Time: 11:45:12 AM

Current Institution: Allenwood FCC  
 Housing Unit: ALM-D-B  
 Living Quarters: D08-233L

Date/Time	Transaction Type	Amount	Ref#	Payment#	Balance
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5/7/2013 7:47:49 PM	Phone Withdrawal	(\$2.00)	TFN0507		\$24.80
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5/4/2013 8:53:14 PM	Phone Withdrawal	(\$1.00)	TFN0504		\$38.40
5/3/2013 9:39:10 PM	TRUL Withdrawal	(\$2.00)	TL0503		\$39.40
5/3/2013 8:31:39 AM	Payroll - IPP	\$7.92	MIPP0413		\$41.40
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4/11/2013 2:58:13 PM	Phone Withdrawal	(\$6.00)	TFN0411		\$40.48
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3/26/2013 9:13:56 PM	Phone Withdrawal	(\$2.00)	TFN0326		\$6.28
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## All Transactions



Inmate Reg #:	63211054	Current Institution:	Allenwood FCC
Inmate Name:	OLDYN, TYRONE	Housing Unit:	ALM-D-B
Report Date:	05/10/2013	Living Quarters:	D08-2331
Report Time:	11:45:22 AM		

<u>Date/Time</u>	<u>Transaction Type</u>	<u>Amount</u>	<u>Ref#</u>	<u>Payment#</u>	<u>Balance</u>
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